

MM

555 TEH

1 **COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C §§ 1983**

2

3 Name

PEREZ JUAN

O,

E-filing

FILED

JUL - 8 2008

4

(Last)

(First)

(Initial)

5

Prisoner Number

F-65615

1-65615

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

6

Institutional Address California Men's Colony

7

P.O. Box 8103 San Luis Obispo, Ca. 93403-8103

8

(PR)

9

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

10

JUAN OCHOA PEREZ

CV 08

3290

TEH

11

(Enter the full name of plaintiff in this action.)

12

vs.

Case No.

(To be provided by the clerk of court)

13

COUNTY OF SAN MATEO;

COMPLAINT UNDER THE

14

SAN MATEO COUNTY SHERIFF DEPT. ; ) CIVIL RIGHTS ACT,

42 U.S.C §§ 1983

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SAN MATEO COUNTY JAIL

STATE TORT CLAIMS

16

SAN MATEO COUNTY HEALTH SERVICES AGENCY

(Supplemental Jurisdiction)

(Enter the full name of the defendant(s) in this action))

17

18 *[All questions on this complaint form must be answered in order for your action to proceed.]*

19

I. Exhaustion of Administrative Remedies

20

**[Note:** You must exhaust your administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.]

22

A. Place of present confinement California Men's Colony (Calif. Dept. of Corrections and Rehabilitation)

23

B. Is there a grievance procedure in this institution?

24

YES( ) NO( ) *NOT Applicable. Suit is against prison custodian before entering prison.*

25

C. Did you present the facts in your complaint for review through the grievance procedure? *Through the San Mateo County Jail*

27

YES( ) NO( ) *procedure, as available.*

28

D. If your answer is YES, list the appeal number and the date and result of the

1 appeal at each level of review. If you did not pursue a certain level of appeal,  
2 explain why.

3 1. Informal appeal See attached at Page 10  
4 "STATEMENT ON ADMINISTRATIVE EXHAUSTION"

5 2. First  
6 formal level See attached at Page 11  
7 "STATEMENT ON EQUITABLE TOLLING AND ESTOPPEL"

8  
9 3. Second formal level See attached at Page 12  
10 "RELIEF FROM UNTIMELY STATE TORT CLAIM"

11 4 Third  
12 formal level \_\_\_\_\_

13  
14  
15 E. Is the last level to which you appealed the highest level of appeal available to  
16 you?

17 YES ( ) NO ( )

18 F. If you did not present your claim for review through the grievance procedure,  
19 explain why. N/A

20  
21 II. Parties

22 A. Write your name and your present address. Do the same for additional plaintiffs,  
23 if any.

24 JUAN OCHOA PEREZ

25 California Men's Colony

26 P.O. Box 8103 San Luis Obispo, CA 93403-8103

27  
28 B. Write the full name of each defendant, his or her official position, and his or her

1 place of employment.

2 County of SAN MATEO

3 SAN MATEO County Sheriff's Dept.

4 SAN MATEO County Jail Facilities

5 SAN MATEO County Health Services Agency

6 III.

7 Statement of Claim (See: APPENDIX: 1 for initial injury information).

8 State here as briefly as possible the facts of your case. Be sure to describe how each  
9 defendant is involved and to include dates, when possible. Do not give any legal arguments or  
10 cite any cases or statutes. If you have more than one claim, each claim should be set forth in a  
11 separate numbered paragraph. I - Court and Unusual Punishment

12 1. Defendants failed to provide necessary medical care  
13 for a serious spinal injury, which occurred June 27, 2006  
14 when plaintiff slipped and fell while working in  
15 the San Mateo County Jail Facilities ("County Jail")  
16 kitchen area. This is shown via EXHIBITS: A and B.

17  
18 2. Upon Leaving custody of San Mateo County Sheriff  
19 ("County Sheriff"), plaintiff entered prison, the  
20 California Dept. of Corrections and Rehabilitation  
21 (CDCR) about March 14, 2006.

22  
23 (see continued pages on Statement of Claim)

24  
25 IV. Relief (See continued pages)

26 Your complaint cannot go forward unless you request specific relief. State briefly exactly  
27 what you want the court to do for you. Make no legal arguments; cite no cases or statutes.

3. On March 27, 2007 plaintiff appealed his, and on April 30, 2007 C.D.C.R. verified plaintiff's disability under the American with Disabilities Act ("A.D.A.") (EXHIBIT: C)
4. On April 25, 2007 C.D.C.R. approved for plaintiff "DISABILITY IMPAIRMENT - DRPI" verification, as shown on a "DISABILITY PLACEMENT PROGRAM VERIFICATION (OPPV)" (EXHIBIT: D) ("OPPV")
5. On October 21, 2007 plaintiff appealed his, and was again on December 21, 2007, verified by C.D.C.R. under the "A.D.A.". This time plaintiff again stated "...totally disabled..." (EXHIBIT: E)
6. Clearly, as shown by state trial court orders (EXHIBIT: B), plaintiff was in chronic pain and in fact, disabled while in defendant's custody and care.
7. Defendant showed "deliberate indifference to serious medical needs" in denying, delaying, and interfering with access to medical services, and, when such services were made available, said medical services did not meet the "standard of care" within the local community.

8. Defendant's deliberate indifference to serious medical needs constitutes violations of the Eighth Amendment to the United States Constitution.

9. Had defendant's acted as required by Federal Constitution (Eighth Amendment) and as a "state-created liberty interest" (Fourteenth Amendment) pursuant to California Penal Code sections 143, 673, 4011, 4011.1, 4011.5, 4011.6, 4011.10, 4015, ... plaintiff:

(a) Would have been alleviated of prolonged and heightened spinal pain for those many months from injury, 6-27-2006, until discharge from defendant's custody on March 14, 2007 (into CDCR custody).

(b) Would not have degraded to the point whereby he is now facing a lifetime of total disability and prevented from any gainful employment.

(c) Would not be where he is today, almost two-years after injury and with incessantly radiating pain.

II - Violation of "Torture Convention"

10. In fact, it was not until April -1 May, 2008 upon contacting the Consul General of Mexico (while incarcerated in CDCR) regarding violations of the "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" 39 U.N. GAOR Supp (No. 51) at 131 ("Torture Convention") that plaintiff's medical treatment was heightened so as to lay the groundwork for:

- (a) Intervention.
- (b) Treatment and Rehabilitation.

11. Clearly though, if NXR acted in response to a "Torture Convention" claim, and CDCR can show at least a history of denigrating medical care, the denial of death or medical care by defendants implicates "Torture Convention" violations.

12. Violations of the "Torture Convention" clearly warrant federal intervention to correct defendants' practices, policies, and customs as they violate the "Jus cogens" peremptory norms. (See, *Sidhman de Blaite v. Argentina* (9<sup>th</sup> Cir 1992) 928 F.2d 699, 715-717).

III - Violations of the "INTERNATIONAL CONVENTION  
on Civil and Political Rights" ("ICCPR")

13. In addition to violations of the "Torture Convention" defendants violate the ICCPR, Article 7 - "...torture or to cruel, inhuman or degrading treatment or punishment" and Article 10

14. As established in *MHKT v. M. Elroy* (E.D. N.Y. 1998) 68 F.Supp.2d 205, 231-232:

"INTERNATIONAL LAW  
An act of Congress should be construed  
in accordance with international law..."

"The International Covenant On Civil And  
Political Rights  
The ICCPR became the law of the United States  
on September 8, 1992. ... It applies to all people  
within the territory of the United States."

15. Thus, as ICCPR is federal law, not only can  
foreign STATE PARTIES act on behalf of its nationals,  
"all people" may act on their own accord to seek its  
enforcement irregardless of foreign government action,  
via the Human Rights Committee at the United Nations

#### IV - Violations of Equal Protections Under Law

16. Plaintiff, due to his being a native of Mexico, and more so due to his effective illiteracy, was ritually, and via defendant's practices, customs, and policies:

- (a) Denied access to "Inmate Grievance Form" written in his native language
- (b) Denied access to legal assistance within the "Jail Facilities" who could interpret and work through administrative and medical grievances, in plaintiff's native language

17. The entire focus of defendant's "Jail facilities" are 'english'; if not in fact applies as english-only.

18. This practice, custom, or policy of "County Sheriff" via its custodial authority over "Jail Facilities" and implemented within "Human Services Agency" is sanctioned by the County, or San Mateo as its Board of Supervisors has taken no proactive steps to order or establish clear County, executive intent, and policy otherwise. The "Blind Eye" will not absolve Municipal liability.

IV - STATE TORT CLAIMS  
(Supplemental Jurisdiction)

19. Plaintiff has a state statute protection of "bodily...harm" pursuant to Calif. Civil Code §43. Defendants have a statutory obligation to not harm pursuant to Calif. Civil Code §1708.
20. Defendants have statutory obligations pursuant to provision of medical care pursuant to Calif. Penal Code §§147, 673, 4011 et seq., 4015.
21. As such, defendants were negligent pursuant to Calif. Civil Code §1708-1725. As the negligent acts came in conjunction with state statutory created duty of care, the claim meets Calif. Gov't. Code §815.2(a). (Reidow v. City of Fresno (E.D. Cal. 2005) 2005 U.S. Dist. LEXIS 31623, at pp. 18, 22).
22. It is alleged that a failure to properly train and supervise the employees of defendant public entities is a "direct" act on the part of the entity, (Id.), and that the employee carried out municipal practice, custom, and policy, negligently, within the scope of their employment (Id.).

STATEMENT ON ADMINISTRATIVE EXHAUSTION

23. Plaintiff is a national of MEXICO who was in the custody of defendants from June 4, 2006 to March 14, 2007. Plaintiff is for all intents and purposes, illiterate.

24. Attached at EXHIBIT A is a May 4, 2003 dated claim for damages filed with the SAN MATEO BOARD of SUPERVISORS. Included with the claim are various "SAN MATEO County Jail Facilities" "Inmate Grievance Forms" filed while in defendant's custody.

25. These administrative remedies were filled out by other inmates for plaintiff. Until discovery is undertaken, we cannot ascertain the 'level' of administrative exhaustion.

26. Attached at EXHIBIT B is the Register of Actions for the underlying criminal matter. The state trial court ordered defendants to provide medical care on 11/16/06, 11/22/06 and 2/07/07.

27. Plaintiff, injuring his spine in a fall while working in defendant's jail kitchen, acted to the best of his ability within confinement, and via his attorney in the criminal matter, to push for administrative action in providing competent medical services.

STATEMENT ON EQUITABLE TOLLING AND ESTOPPEL

28. As delineated in EXHIBIT A, defendants took clear advantage of a disabled and evidently an illiterate individual, triggering Tolling and Estoppel.
29. Defendants did so regarding both the issues of medical treatment and administrative grievance procedures.
30. Plaintiff, after transferring from defendant's custody to state prison custody MARCH 14, 2002 at the COCK SAN QUENTIN Reception Center, was transferred to state prison reception center at Delano, then, to state prison at Avenal, and finally to state prison at Calif. Men's Colony which has an integrated hospital facility.
31. Plaintiff being disabled and illiterate, being unable to walk to the Law Library and incapable of comprehending an English-only Law Library, was denied "meaningful access to the courts" and a "full and fair opportunity to litigate"; including meaningful access to administrative arms and units of government. (Jarrow Formulas, Inc. v. Lu Marche (2002) 97 CalApp4<sup>th</sup> 1, 117 CalApp4<sup>th</sup> 2d 388, 401; O'Keefe v. Van Doening (9<sup>th</sup> Cir. 1996) 82 F.3d 322, 325)

RELIEF FROM UNTIMELY STATE TORT CLAIM

32. "Relief from the failure to timely present a government tort claim is available only if the petitioner establishes by a preponderance of the evidence the failure was "through mistake, inadvertence, surprise, or excusable neglect." ([Calif. Gov't. Code] § 946.6, subd. (c)(1)... ) ... when tested by the objective 'reasonably prudent person' standard. ... ... 'the act or omission of a reasonably prudent person under the same or similar circumstances'" (RENTERIA v. Juvenile Justice Dept. of Corrections and Rehabilitation (2006) 135 Cal.App.4<sup>th</sup> 903, 908, 37 Cal.Rptr.3d 223, 282).

33. Defendant, County of SAN MATEO, having received plaintiff's state tort claim (EXHIBIT: A) and request for late claim (EXHIBIT: A at pp. 6-7), and having DENIED the claim and request for late claim (EXHIBIT: F), does move this court to allow proceeding on state tort claim by accepting the late government tort claim filing pursuant to relief available as cited, or on other authority at the court's discretion.

34.  
1 Plaintiff seeks monetary damages to cover loss of future income, and  
2 to cover future medically (Individual (i.e., i.e., Plaintiff seeks  
3 injunctive relief (Ortiz Case, et al.) compelling defendants  
4 to make substantive changes in practices, policies, and customs  
5 so to provide necessary medical and rehabilitative care, and on  
6 a timely basis.

7 I declare under penalty of perjury that the foregoing is true and correct.

8

9

Signed this 18<sup>th</sup> day of June, 2008

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PEREZ JUAN

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(Plaintiff's signature)

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COMPLAINT

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-4-

APPENDIX: 1

APPENDIX: 1

1.

During petitioners incarceration at San Mateo County Jail, at Redwood City, California, 94063, petitioner was assigned to work in the Kitchen at the jail.

On June 27, 2006, at approximately 1700 hours, petitioner was cleaning the kitchen, cleaning trays off into a large plastic bag. When the bag was full, petitioner tied off the top and put the bag on his right shoulder. In the process of carrying the bag of garbage, which weighed approximately 25lbs, petitioner slipped on the wet floor fell backwards with the bag of garbage falling on top of him. That is when Mr. Perez heard a snap in his lower back.

He was then taken to the infirmary at approximately 1730 hours, and looked at by the jail M.D., and was told nothing was wrong with him, received (1) pain pill and was told to return to work the next day, even after Mr. Perez explained that he was in extreme pain in his lower back and neck - the doctor did not believe that he was injured.

From June 27, 2006 until July 19, 2006 when petitioner was finally taken for x-rays, petitioner was in the infirmary hospital. This entire time petitioner was sleeping, leaning on the middle bunk because he could not lay down due to the pain in his lower back and neck.



MAINTAIN & FILED DATE 6/19/2008 per  
Hoover's Book (1988) 108 SC 2379 2385